

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

BERTHA MCKEOWN

Plaintiff,

v.

NIKE, INC.

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

**Civil Action**

**NOTICE OF REMOVAL**

Defendant, Nike, Inc. (“Nike”), by and through its undersigned counsel, hereby removes the above-captioned action, which is presently docketed in the District Court in the 471st Judicial District, Collin County, Texas, Cause No. 471-05321-2021, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, Nike states:

**INFORMATION REQUIRED BY THE EASTERN DISTRICT OF TEXAS’ CIVIL  
LOCAL RULES**

1. In accordance with Local Rule CV-81(c)(1), Nike states that the removed case is currently pending and provides the following list of all parties:

Bertha McKeown, Plaintiff (“Plaintiff”); and

Nike, Inc., Defendant.

2. In accordance with Local Rule CV-81(c)(2), Nike is filing contemporaneously herewith a civil cover sheet. APP. 1-2.

3. In accordance with Local Rule CV-81(c)(2), attached hereto is a certified copy of the state court docket sheet and a copy of all pleadings that assert causes of action, answers to such pleadings, and process and orders served upon Nike. APP. 3-13.

4. In accordance with Local Rule CV-81(c)(3), the following is a complete list of attorneys involved in this action:

Counsel for Plaintiff: Zeke O. Fortenberry  
Texas Bar No. 24061361  
Fortenberry Firm PLLC  
18333 Preston Road, Suite 375  
Dallas, Texas 75252  
Telephone: (469) 636-7373  
Facsimile: (469) 716-4190

Counsel for Defendant: Jervonne Newsome  
Texas Bar No. 24094869  
Lynn, Pinker, Hurst & Schwegmann, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
Telephone: (214) 292-3607  
Facsimile: (214) 981-3839

Max R. Deitchler  
(Anticipated *Pro Hac Vice* Admission)  
Arkansas Bar No. 2012200  
Kutak Rock LLP  
234 East Millsap Road, Suite 200  
Fayetteville, Arkansas 72703-4099  
Telephone: (479) 973-4200  
Facsimile: (479) 973-0007

5. In accordance with Local Rule CV-81(c)(4), Nike reports that Plaintiff has requested a jury in the state court action.

6. In accordance with Local Rule CV-81(c)(5), the name and address of the Court from which the case is being removed is:

471st Judicial District Court, Collin County, Texas  
Russell A. Steindam Courts Building  
2100 Bloomdale Road, Suite 30276  
McKinney, Texas 75071

## PARTIES AND BACKGROUND

7. This action arises from personal injuries allegedly sustained by Plaintiff while shopping at the Nike Factory Store located at 820 West Stacy Road, Suite 356, Allen, Texas 75013 (the “Nike Factory Store”). *See* APP. 6 (Petition, ¶¶ 4.1-4.2).

8. Plaintiff, upon information and belief, is a citizen of Texas, having a residence at 106 Tehama Court, Allen, Texas 75013. *See* APP. 5 (Petition, ¶ 2.1).

9. Nike, Inc. is a corporation organized and existing under the laws of the State of Oregon with its principal place of business at One Bowerman Drive, Beaverton, Oregon 97005-6453. *Id.*

10. Plaintiff alleges that while shopping at the Nike Factory Store on September 24, 2019, she incurred personal injury “when she slipped and fell on pieces of shelving that were obstructing the floor of the check-out line.” *See* APP. 6 (Petition, ¶¶ 4.1-4.2).

11. Plaintiff alleges *inter alia* that, “as a proximate result of [Nike’s] negligence,” she suffered “extensive injuries and damages[,]” including, past and future: medical expenses, lost wages, physical pain and suffering, mental anguish, and physical impairment. *See* APP. 10 (Petition, ¶ 11.1). Plaintiff additionally seeks exemplary damages. *Id.*

12. Plaintiff alleges *inter alia* that she seeks monetary relief “over \$1,000,000” and “judgment in excess of the jurisdictional limits of” the District Court of Collin County, Texas. *See* APP. 6, 11 (Petition, ¶3.2 & Prayer for Relief).

13. Prior to filing the present suit, Plaintiff served a pre-suit settlement demand on Nike on July 2, 2021, seeking \$695,000.00, which included \$69,257.02 in medical expenses allegedly incurred to date which, as noted above, will allegedly continue to aggregate into the future. *See also* APP. 10-11 (Petition, ¶ 11.1); APP. 16-17 (Pre-suit Demand Letter).

14. On September 22, 2021, Plaintiff served a copy of the Petition filed in the District Court of Collin County, Texas on Nike. Accordingly, this Notice of Removal is timely filed. 28 U.S.C. § 1446(b); *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999).

#### **BASIS FOR REMOVAL TO FEDERAL COURT**

15. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.”

16. This Court’s original jurisdiction is based upon diversity of citizenship under 28 U.S.C. § 1332 insofar as all parties are of diverse citizenship at all times material hereto and Plaintiff’s claimed damages are in excess of \$75,000, as established below.

17. Plaintiff is a citizen of Texas, and Nike is a citizen of Oregon. Therefore, the requisite diversity of citizenship exists between the parties pursuant to 28 U.S.C. § 1332.

18. Second, the amount in controversy requirement set forth in 28 U.S.C. § 1332 is satisfied. “A Defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). The amount-in-controversy requirement may be satisfied using pre-suit demand letters. *See, e.g., St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1254 (5th Cir. 1998) (examining the plaintiffs’ pre-complaint demand letters to determine whether a claim for declaratory relief satisfied the requisite amount in controversy); *Wilson v. Belin*, 20 F.3d 644, 651n.8 (5th Cir. 1994) (considering letter from plaintiff’s counsel to defendants wherein the stated amount in controversy exceeded the jurisdictional amount); *see also Molina v. Wal-Mart*

*Stores Texas, L.P.*, 535 F. Supp. 2d 805, 808 (W.D. Tex. 2008) (“Pre-suit demand letters may be submitted as evidence to demonstrate that the amount in controversy exceeds \$75,000.”).

19. Based upon the allegations in the Complaint, including the various elements of damages—past, present, and future—to which Plaintiff alleges she is entitled, the nearly \$70,000.00 of medical records purportedly incurred by Plaintiff to date, her request for over \$1,000,000 in relief, and her July 2, 2021, pre-suit demand for \$695,000.00, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* APP. 6 (Petition, ¶ 3.2); APP. 16-17 (Pre-Suit Demand Letter). Thus, the amount-in-controversy requirement set forth in 28 U.S.C. § 1332 is satisfied, although Nike denies Plaintiff’s allegations and denies that Plaintiff will ultimately recover such amount.

20. Therefore, Nike properly removed this case to this Court pursuant to 28 U.S.C. § 1441 because the parties are diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

21. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure as it has been filed within thirty days of September 22, 2021—the date that the Petition was served on Nike.

22. Therefore, based on the foregoing, this case is removed from the District Court of Collin County, Texas to the United States District Court for the Eastern District of Texas.

23. Venue is proper under 28 U.S.C. § 1441(a) when the district embraces the place where such action is pending. Here, the United States District Court for the Eastern District of Texas is the appropriate venue because this case is pending in the District Court of Collin County, Texas.

24. By filing this Notice of Removal, Nike is not making a general appearance and is not waiving its rights to any defenses and/or grounds for dismissal pursuant to Federal Rule of Civil Procedure 12 or otherwise.

25. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all the process, pleadings, orders, and documents from the state court which have been served upon Nike are being filed with this Notice of Removal.

26. Upon filing of this Notice of Removal, Nike shall give written notice thereof to Zeke O. Fortenberry, Fortenberry Firm PLLC, 18333 Preston Road, Suite 375, Dallas, Texas 75252. Further, Nike shall file copies of this Notice of Removal with a Notice of Filing Notice of Removal with the Clerk for the District Court of Collin County, Texas in order to effect removal of this action pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Nike, Inc. respectfully removes the above-captioned matter now pending in the District Court of Collin County, Texas to the United States District Court for the Eastern District of Texas, and respectfully requests all other relief to which it is entitled.

**Dated: October 17, 2021**

Respectfully submitted,

By: /s/ Jervonne D. Newsome  
Jervonne Newsome  
Texas Bar No. 24094869  
Lynn, Pinker, Hurst & Schwegmann, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
Telephone: (214) 292-3607  
Facsimile: (214) 981-3839  
[jnewsome@lynnllp.com](mailto:jnewsome@lynnllp.com)

~and~

Max R. Deitchler  
(Anticipated *Pro Hac Vice* Admission)  
Arkansas Bar No. 2012200  
Kutak Rock LLP  
234 East Millsap Road, Suite 200  
Fayetteville, Arkansas 72703-4099  
Telephone: (479) 973-4200  
Facsimile: (479) 973-0007  
[max.deitchler@kutakrock.com](mailto:max.deitchler@kutakrock.com)

**ATTORNEYS FOR DEFENDANT  
NIKE, INC.**

**CERTIFICATE OF SERVICE**

I, Jervonne Newsome, attorney for Defendant Nike, Inc., being duly sworn, do hereby certify that I caused a true and correct copy of the Notice of Removal to be filed with the Court. Service of the same will be made upon all counsel of record via the Court's Electronic Filing System.

October 17, 2021

/s/ Jervonne D. Newsome  
Jervonne Newsome